

PART 2

# **Further Language Development**

# Writing Activities

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## Language Activity I: Audience, Purpose, and Tone (page 177)

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### Exercise A

(page 178)

1.   B:   To your boss
2.   B:   To your instructor
3.   A:   To the judge in traffic court
4.   A:   To your boss
5.   B:   To your instructor

### Exercise B

(page 179)

One possible answer for each purpose is included below:

1. To relate an incident: **Reporting a traffic accident to a police officer**
2. To describe a person or thing: **Describing a burglar to the police**
3. To explain a process: **Explaining to the jury how the defendant set up his methamphetamine lab**
4. To request information: **Asking the court clerk about proper filing procedures**

5. To give an opinion: **The conclusion section of a memorandum where you give a brief opinion with support about whether your client should sue or not.**

### Exercise C

(page 180)

- formal      2. Mr. James, please report to the court no later than 7 AM on  
polite          Friday.
- informal    3. I would like to have the report by Monday if at all possible.  
polite
- informal    4. Do not forget to forward the brief to the court.  
impolite (unless said to a friend)
- formal      5. Would you mind forwarding a copy of the brief?  
polite

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## Language Activity 2: Paraphrasing (page 180)

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### Exercise A

(page 182)

You may want to take your students through the four steps with this example the first time (informally) and then have them do the formal paraphrase on their own.

*Note:* You may wish to ignore the problem surrounding the original meaning of *men* in the quote. However, it may be an interesting point to discuss sexist language and the culturally appropriate forms and usage for **your** context.

1. Sample answer: Paraphrase the sentence in a very informal way as though you were just talking about it with a friend in a normal conversation.  
People set up and give power to governments to make sure their rights are protected.
2. Sample answer: Paraphrase the sentence for an educated adult in a style that would be appropriate for a formal letter to the editor of a newspaper.  
It is the people who establish and empower the government so that it can protect our rights.

### Exercise B

(page 182)

1. Sample answer: Paraphrase it for a colleague.  
A person who was licensed to sell alcohol by the drink can be sued for damages if it is clearly proven that he or she knew or should have known he or she served a customer who was obviously intoxicated or who was under twenty-one.
2. Sample answer: Paraphrase it for a bar owner who has been charged with selling beer to a 17 year old. You can be sued for the damages because you served her and the other side can prove that you should have known that she was under twenty-one.

### Exercise C

(page 183)

Very simple sample answer:

If an officer announces that she or he is a police officer, has a search warrant, and is not allowed into a house, she or he can break a door, a window, or anything in the house to carry out the warrant or if necessary to free himself or herself or any person helping him or her carry out the warrant.

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## Language Activity 3: Summarizing (page 183)

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### Exercise A

(page 184)

When doing a summary, it's important that only the main ideas be retained. This can be difficult for students from civil code countries who think that nothing should be left out. You might want to first practice using oral summaries of movies or stories that are well known. Give the students a very strict word limit [50–75 words] to summarize the movie or story. They should be able to do it orally and then in writing.

## Language Activity 4: Email (page 184)

### Exercise A

(page 188)

The numbers in the left-hand column refer to the Ten Suggestions for Better Emailing in the student text, page 184.

A. 1	from: Craftylawyer@rentallawyer.com <i>not a very professional email address</i>
B. 10a	to: Jan Drummer <i>should be to Ronaldo!</i>
C. 0	cc:
D. 0	bcc:
E. 0	date: Nov. 17, 2007
F. 10f	<b><i>forgotten attachments!</i></b>
G. 2	subj: RE: <i>always use a good subject line!</i>
H. 8	Ronaldo, Sorry it's taken me two weeks to answer your mail.
I. 10f and 4	I've attached a couple of short comments for you to read.
J. 9 10b	Also sorry I didn't understand that you had already settled out <i>[of is missing]</i> court. I should have read your other emails before I called Drummer's lawyer and yelled at him.
K. 7	Well, Drummer will get over it.
L. 5	You really were stupid to give him that information; his lawyer would have never found it the way we had hidden it.
M. 5	Make sure you don't give those other emails to anyone, ok? They could really get us in trouble.
N. 7	Now I need you to fill out these forms so that I can get paid by your company.
O. 3	Call me if you need anything else,  Carl

### **Exercise B**

(page 190)

Sample answer:

Thanks for your message and invitation. We can meet on Tuesday at noon at Sam's, but I think it's my turn to pick up the check. I'll be glad to go over the merger papers then, too. I'll tell Jenny you said hello. Let me know if something comes up before then.

Thom

### **Exercise C**

(page 191)

Sample answer:

Fred:

Call me as soon as you receive this message. It seems that we will need to meet tomorrow to prepare a presentation for the director at this week's meeting. Do you have any ideas? Unfortunately, the man in advertising who helped us before is no longer working with us. That means that we are on our own. Looking forward to hearing from you. Best wishes,

Charles

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## Language Activity 5: Client Letters (page 191)

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### Exercise A

(page 194)

This letter is a sample. Of course, many other variants of the letter are possible. With this exercise, you will be able to explain that the format for a letter provided in Part 2, Client Letters (page 191), is a guideline only. The letter does not follow the five-part form because it is a simple letter arranging for an appointment.

Jennifer Holder  
1020 Marcus Ave.  
Lexington, KY 20334

April 14, 20—

Mrs. Penelope Rosewood  
349 Culpepper Drive  
Lexington, KY 20333

Dear Mrs. Rosewood:

As you know the negotiations for the property settlement agreement for your divorce have been going well. Mr. Rosewood has been cooperative and agreed to most of your requests for property division. One item remains in contention, however: the ownership of your champion racehorse, Bonnie Blue. Your husband's lawyers have been authorized to offer you a \$1,000,000 lump sum payment if you agree to transfer your share of the horse to Mr. Rosewood.

In light of our review of your husband's financial records, we believe the financial offer is an excellent one. However, we are aware that not only finances are involved in property settlement agreements. Therefore, we would like to meet with you next week to hear your views on this offer.

My secretary will call you Monday to arrange a time that is suitable for you to meet with us. We look forward to seeing you next week. In the meantime, if you have any questions, please do not hesitate to call me.

Sincerely,

*Jennifer Holder*

Jennifer Holder  
Attorney-at-Law

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## Language Activity 6: Legal Memoranda (page 194)

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This brief appendix is not intended to take the place of the numerous course books on legal writing that can be found in the United States. In fact, if you plan on working extensively on legal memoranda with your students, we recommend that you review some of these books. Two books that we have found helpful when working with non-native speakers of English are:

- Shapo, Helene S., Marilyn R. Walter, and Elizabeth Fajans. *Writing and Analysis in the Law*. 4<sup>th</sup> Rev. Ed. New York: Foundation Press. 2003.
- Oates, Laurel Currie, and Anne Enquist. *The Legal Writing Handbook*. 4<sup>th</sup> Ed. New York: Aspen Publishers. 2006.

### Exercise A

(page 197)

Discussion (of one element for the sample answer):

Jason Point was not old enough to be left alone outside to play in an unfamiliar neighborhood. In Louisiana, the courts look to the age of the child to determine whether a parent can be held contributorily negligent for the wrongful death of a child. *Simmons v. Whittington*, 444 So.2d 1357 (La. 1984). The courts in Louisiana have found parents contributorily negligent when children six and under have been killed while under the supervision of the parent or their appointed babysitters. *Humphries v. T.L. James & Co.*, 468 So.2d 819 (La. 1985); *Anderson v. New Orleans Public Service, Inc.*, 572 So.2d 775 (La. 1990). When the children have been nine or over, courts have not found the parents contributorily negligent. *Simmons at 1359*; *Argus v. Scheppegegrell*, 472 So.2d 573 (La. 1985). In *Humphries*, the mother was found contributorily negligent when her six-year-old son drowned in a nearby gravel pit while under her supervision. The Pointer case is distinguishable from *Humphries* because in *Humphries* the mother was familiar with the area, whereas the Pointers were new to the neighborhood and did not know about the neighbor's pool. However, Jason Pointer was even younger than the *Humphries* child, and courts in Louisiana have traditionally looked to the child's age when making a determination of contributory negligence.

Although the Pointer case is factually similar to *Simmons*, Mrs. Pointer, as Mrs. Simmons, did not know of the existence of a swimming pool in the neighborhood, the child in *Simmons* was nine, and Jason was five. In terms of cognitive develop-



ment and recognition of dangers, a five-year-old is much more similar to a six-year-old, as in *Humphries*, than to the nine-year-old boy in *Simmons*. A court will most likely find that Jason was not old enough to recognize the danger of the swimming pool without the guidance of his mother.

## *Reading Activities*

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### **Language Activity 7: Skimming and Scanning (page 198)**

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#### **Exercise A**

(page 198)

2. Ms. Cardwell was able to give consent to the medical treatment even though she was still a minor.

#### **Exercise B**

(page 199)

1. every 2 years
2. 30 years old
3. 9 years
4. 7 years
5. the Vice-President of the United States
6. the legislators of each state (not the people!)

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**Language Activity 8: Case Reading (page 200)**


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**Exercise A**

(page 204)

<p><b>MARY ANN BAINES v. GREGORY TODD BAINES</b>  <b>Appeal from the Circuit Court for Davidson County</b>  <b>No. 01D2253 Carol Soloman, Judge</b></p> <hr/> <p><b>No. M2004-02730-COA-R3-CV - Filed March 21, 2006</b></p> <hr/> <p><b>OPINION</b></p>	
<p><b>PROCEDURAL HISTORY</b> + <b>FACTS</b></p>	<p>Mary Ann Baines, the mother of the child, filed this divorce action in the Circuit Court for Davidson County seeking a divorce from Gregory Todd Baines and custody of their only child. Process was served on the father to which he filed responsive pleadings seeking <i>inter alia</i> custody of their child. After commencing this action, the mother moved to Wilson County to live with her parents while the divorce was pending. While living with her parents, the mother entered a drug rehabilitation program following which her parents filed a dependency and neglect action in the Juvenile Court of Wilson County, seeking an emergency order for custody.</p>
<p><b>PROCEDURAL HISTORY</b> + <b>FACTS</b></p>	<p>For reasons not fully explained, the dependency and neglect petition filed by the grandparents indicated the petitioners did not know where the father could be served. Although the mother and her parents knew the address of and how to contact the father, he was not given notice of the filing of the dependency and neglect petition or the emergency hearing. Moreover, he was never served with process. Following an emergency hearing, the Juvenile Court awarded temporary custody to the maternal grandparents. Shortly thereafter, the mother consented to her parents' petition, and the Juvenile Court awarded custody to her parents, all of which occurred without the father's knowledge or consent.</p>

<b>PROCEDURAL HISTORY</b>	<p>Being ignorant of the proceedings in the Wilson County Juvenile Court, the father pursued this action to obtain custody of their child. Prior to the final hearing in this action, the father learned of the dependency and neglect proceeding. He voluntarily intervened in that action and, following a hearing, was awarded custody of the child. At the conclusion of that hearing the Juvenile Court Judge announced he was dismissing the grandparents' petition; however, no order was entered following that hearing.</p>
<b>PROCEDURAL HISTORY</b>	<p>Subsequent to the Juvenile Court hearing referenced above, the mother and father voluntarily proceeded with the divorce and custody action in the Circuit Court of Davidson County, during which each of them was represented by counsel at all material times. It is significant to note that the mother participated without advising the Circuit Court of her contention that the Juvenile Court had exclusive jurisdiction over the custody issue. Being unmindful of a potential jurisdictional issue, the Circuit Court Judge dutifully presided over this divorce and custody action to a final hearing. Following a full evidentiary hearing, in which the mother and father and their respective counsel participated, the Circuit Court granted the parties a divorce and awarded custody of the child to the father.</p>
<b>PROCEDURAL HISTORY</b>	<p>Within thirty days of that order being filed, the mother filed a motion to declare the order of the Circuit Court of Davidson County void, contending the Juvenile Court of Wilson County had exclusive jurisdiction pursuant to Tenn. Code Ann. §37-1-103(a) and (c). The father opposed the motion contending the Juvenile Court had dismissed the dependency and neglect petition and awarded custody to him.</p>
<b>PROCEDURAL HISTORY</b>	<p>To resolve the conflicting representations of the parents, the Circuit Court, Judge Carol Soloman, corresponded with the Juvenile Court, Judge Barry Tatum. Judge Tatum provided a written reply advising that although the order had not been entered, he dismissed the dependency and neglect proceedings. In furtherance of that, Judge Tatum entered an order confirming the dismissal of the dependency and neglect petition and provided a copy of the order to the Circuit Court. In the same correspondence Judge Tatum advised that "jurisdiction over the minor child, . . . has been and shall continue to be with the Eighth Circuit Court of Davidson County, Tennessee." After corresponding with Judge Tatum, the Circuit Court denied the mother's motion to declare the divorce and custody order void, from which post trial order the mother appeals.</p>

<p><b>LEGAL ISSUE</b></p> <p><b>HOLDING</b></p> <p><b>REASONING</b></p>	<p>The mother’s appeal is based upon subject matter jurisdiction, contending <u>once the Juvenile Court attains jurisdiction in a dependent and neglect action, it retains exclusive jurisdiction pursuant to Tenn. Code Ann. §37-1-103(a) and (c) until the child reaches the age of majority or the case is dismissed.</u> She also contends the courts cannot confer subject matter jurisdiction on a court that does not have subject matter jurisdiction, their agreement notwithstanding. <u>We find no merit with this contention because it fails to recognize the authority of the Juvenile Court to dismiss a dependency and neglect petition, which was done in this matter although the requisite paper work to confirm the dismissal was less than timely.</u> Moreover, when the mother voluntarily participated in the final hearing in this matter, the focus of which was the issue of custody, she was fully aware of the fact the Juvenile Court had announced that it was dismissing the dependent and neglect petition. The fact the paper work necessary to memorialize and authenticate the dismissal had not been entered was as much her fault as it was the father’s. Finding this is not one of those cases for which we should place form over substance, or to reward a litigant for being less than candid with the Circuit Court prior to and during the final hearing, we therefore affirm the decision of the Circuit Court of Davidson County to deny her post trial motion.</p>
<p><b>DISPOSITION OF CASE</b></p>	<p>The father requests that we declare the appeal frivolous. Although this appeal is perilously close to being frivolous, we decline the invitation to declare it as such.</p>
<p><b>DISPOSITION OF CASE</b></p>	<p>The judgment of the trial court is affirmed, and this matter is remanded with costs of appeal assessed against appellant, Mary Ann Baines.</p>

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## Language Activity 9: Statutory Interpretation (page 207)

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After reviewing the information on flow-charting statutes in Part 2, Statutory Interpretation (page 207), you may want to have the students create a chart of a translated statute involving fair use (if fair use exists) for the laws of their own countries. They can then explain their statutes to their classmates.

# Oral Communication Activities

## Language Activity 10: Word Stress (page 209)



### Exercise A

(page 211)

1. a. OBJECT
- b. SUBJECT
- c. RECORD
- d. CONVICT
- e. DIGEST
- f. AFFECT
- g. DELIBERATE
- h. CONDUCT
- i. CONTEST
- j. CONTENT

### Listening Script

- a. obJECT
- b. SUBject
- c. reCORD
- d. conVICT
- e. DIgest
- f. afFECT
- g. deLIberate
- h. CONduct
- i. CONtest
- j. conTENT

2. Sample sentences are below. Many other options are possible.
  - a. The defense attorney **objected** to the introduction of the glove as evidence.
  - b. The attorney could not get his client to stay on the **subject** of her intoxication.
  - c. The police **recorded** the confession of the defendant.
  - d. We need luck to **convict** this defendant. The evidence is not that strong.
  - e. Check the **digest** to see if any new cases have been decided on probable cause.
  - f. Too much publicity can **affect** the outcome of a trial.

- g. The jury **deliberated** for more than ten hours before reaching a verdict.
- h. His **conduct** during the trial was impeccable.
- i. The US legal system is often like a **contest** between attorneys.
- j. My client was happy with the verdict. She told me how **content** she was just after the trial.

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## Language Activity II: Obtaining Information (page 211)

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### Exercise A. Changing Sentences

(page 212)

- 1. Is he free?
- 2. Would you like coffee while you wait?
- 3. Is it 1 PM already?
- 4. Don't you need more time before you see me?
- 5. You brought the corrections to the contract I faxed you, didn't you?

### Exercise B. Sentence Formation

(page 214)

- 2. Yes, I am. But I came to the United States when I was very young.
- 3. No, I'm not. I practice trust and estate law.
- 4. Yes, I did. Her name really is Chocolate Tort.
- 5. No, I'm not. I work on the 97th floor.
- 6. No, I wasn't. I always intended to be a lawyer.
- 7. No, I didn't. I graduated at the top of my class.
- 8. No, I don't. I love New York.
- 9. Yes, that's right. My legal name is Naimin.
- 10. No, I wouldn't agree. I think that trusts and estates are interesting.

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## Language Activity 12: Register Analysis (page 215)

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### Exercise A. Sentence Correction

(page 215)

1. • Could I have the latest copy of the *Cornell Law Review*?
  - Can I have the latest copy of the *Cornell Law Review*, please?
2. • Could I have your name, address, and account number, please?
3. • Please turn in your briefs.
  - Don't forget to turn in your briefs.
4. • Please keep it down.
5. • Go on talking. I'll be right back.
  - Sure. Don't hurry.

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## Language Activity 13: Debate (page 216)

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After reviewing the information on agreeing and disagreeing found in Part 2, Debate (page 216), you may want to have the students conduct a debate on an issue that is important to the class. In setting up debate teams, it is often helpful to have students argue the opposite of what they believe. For example, if you decide to debate gun control, a hot topic in the United States, students in favor of gun control should argue against it and vice versa. It is often easier for students to leave the emotion out of debate and concentrate on the issues if they do not argue in favor of their beliefs.

Make sure the the topic you choose for students to debate is one they want to discuss and not just what you are interested in discussing. Hot topics in the United States include

- a. *Roe v. Wade* (abortion)
- b. euthanasia (right to die)
- c. gun control
- d. war on terrorism
- e. gay rights/marriage

# Grammar Activities

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## Language Activity 14: Verb Forms, Tense, Time, and Aspect (page 218)

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### Exercise A

(page 219)

1. past
2. base form or infinitive
3. present participle
4. past or past participle
5. (singular) past

### Exercise B

(page 222)

1. future, present
2. timeless, present
3. present, future with *will*
4. future, present perfect
5. future, present continuous<sup>1</sup>
6. past, past continuous
7. timeless, present
8. future, future with *going to*
9. timeless, present
10. present, present continuous

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<sup>1</sup> Note: Many refer to continuous forms as progressive; both are correct.



### Exercise C

(page 224)

1. b.
2. d.
3. e.
4. a.
5. e.

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## Language Activity 15: Simple Past and Present Perfect (page 226)

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### Exercise A

(page 227)

1. Kim Anderson **testified** that on the day of the accident while she was staying at her Aunt Gail Bailey's apartment in the Calliope Project, she **experienced** stomach pains. She **asked** Gail Bailey to watch the children because Ms. Anderson **felt** drowsy after taking medicine. Ms. Anderson then **fell** asleep. Moses Pettis, the investigating officer, **testified** that he **interviewed** the three children who **were** with Dennis (the boy who was killed) on the day of the accident. Cornell Webb **stated** to the officer that Kim Anderson **gave** Dennis permission to go swimming with the other children.
2. Because all the activities were completed in the past.
3. The plaintiff, Billy Minor, **sustained** a severe head injury with underlying concussion and contusions of the brain, causing plaintiff to suffer headaches, dizziness, and a marked change in his personality. Plaintiff further **sustained** a severe injury to his left wrist and lower arm as a result of which tendons, tissues, blood vessels, muscles, nerves, and ligaments were cut, torn, and bruised, whereby scar tissue **has formed**, leaving his wrist stiff, weak, deformed, painful, and capable only of limited motion and use. As a result whereof the plaintiff **has suffered** and will in the future continue to suffer permanent crippling, discomfort, and physical and mental impairment.

By reason of the injuries **complained** of the plaintiff was forced to expend and to this date **has expended** the sum of \$ 35,000, for medical attention, hospitalization, and drugs, of which the following is an itemized statement:

4. The three instances of simple past are describing activities that were completed in the past, so the simple past tense is needed. Present perfect is needed in three locations because the action began in the past and continues to the present.

## Exercise B

(page 228)

**Attractive nuisance** [A dangerous feature on land that may cause children to investigate it. For example, a swimming pool has sometimes been found to be an attractive nuisance.] is a doctrine that **has been** (be) around for a long time. However, the courts **have not found** (not/find) a way to agree on the best way to approach the doctrine. When considering the applicability of the doctrine, some courts **have looked** (look) to the Restatement of Torts. In the comments to Rest. Torts §339, when considering the applicability of the doctrine to children, the following is said:

In the great majority of the cases in which the rule has been applied, the plaintiff **was** (be) a child of not more than twelve years of age. The earliest decisions all **involved** (involve) children of the age of mischief between six and twelve. The later cases, however, **included** (include) a substantial number in which recovery has been permitted, under the rule, where the child is of high school age, ranging in a few instances as high as sixteen or seventeen years.

In the Simmons case **discussed** (discuss) earlier in the chapter, the court **did not find** (not/find) the mother negligent when her son, aged nine, **drowned** (drown) in the neighbor's pool.

**Exercise C**

(page 229)

Since graduating from law school, Martin **has** worked at Wuttke Associates in New York City. Lately, however, he **has** considered looking for a new position in a family law firm. In law school, he [**has—deleted**] wanted to work on child custody issues because of his own background. His parents [**have—deleted**] divorced when he was a child and have had a long, bitter custody battle over him and his sister. He [**has—deleted**] entered law school because he wanted to help other children in similar situations. However, upon graduation, he was offered a great job in a top law firm and could not resist the offer. Now, after two years at the firm, he **has** decided to seriously reconsider his legal focus. The eighty-hour work weeks leave him no time to even volunteer in a family law clinic. He believes the time has come to make a change in his legal career.

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**Language Activity 16: Modals and Semi-Modals**  
(page 229)

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[*Language note:* It is important to encourage students to use modals since they are among the simplest ways to hedge in both speech and writing. A good lawyer should know when to hedge. For example:

*Mother:* Marsha, did you eat the last candy bar?

*Marsha:* Why should I do that?

Why would I do that?

How could I do such a thing?

These are sneaky ways to imply an answer without having to lie—the average person interprets this as “no,” but the future lawyer hasn’t answered anything—he or she has merely asked a second question.]

**Exercise A: Writing**

(page 230)

Here is an example of a standard letter format that may be used for informal and formal business situations. As in memo writing, the paragraphs should be relatively short and separated by double spacing.

653 Pleasant View #309 Memphis TN 38111	return address—address of the letter writer
November 7, 2000	date
Ms. Judy Hwang United Delivery Service 48 North Larchmont Cove Memphis TN 38111	recipient of the letter with her title name of company (if there is one) inside address—address of the recipient note order: name, street, city, state, zip code
Dear Ms. Hwang:	salutation, notice colon not comma
Thank you for asking me why you should study law at Memphis College of Law.	
Sincerely,	standard closing; don't use any other several spaces where the name can be signed leave three or four blank spaces for your signature
Deepak Patel	letter writer's name must be typed

Of course the answers will depend on student resources, but here is one possible answer to each of the questions.

1. Law could be a good preparation for a career in business.
2. Many would say that it is the best law school in the country.
3. No, Latin wouldn't be essential to your success in law school.
4. You would have to take the same courses that every other first-year student takes. We have no electives until the second year.

5. I would take the courses with the most difficult professors. They would challenge you to learn more.
6. Yes, but then you would fail the exams.
7. I would suggest that you read as much as you can about the legal system of our country.
8. You could talk to people who have taken it at different times. It might change every year.
9. You could get a position in one of our embassies or with an international law firm working on corporate matters.
10. I would suggest studying poetry and linguistics, but then you would never earn a living doing what you liked.

### Exercise B. Fill in the Blanks

(page 231)

1. shall
2. shall/may
3. shall
4. shall
5. shall
6. may
7. shall
8. shall
9. shall
10. may/may

### Exercise C. Listening

(page 233)

Listening Script

*Zane:* Hey, Frank. How are you? Great day, wouldn't you say?

*Frank:* Normally I would agree with you, but I just got back from hospital seeing Dieter and Pam, that couple from down the street. They are in bad shape. The doctor isn't sure that Pam will make it.

[Note: Frank, from New Zealand, says “*from* hospital” not “*from the* hospital” as Americans would.]

*Zane:* That’s horrible. I sure hope she makes it. What happened to them?

*Frank:* Didn’t you hear? They were in a terrible accident. They were hit by a bakery truck just around the corner last night. It looks like the driver was at fault.

*Zane:* I heard a lot of noise last night.

*Frank:* This is going to be a mess. Dieter’s brother told me that they found out the truck driver’s license had been suspended last month for DUI. (DUI = driving under the influence of alcohol or drugs)

*Zane:* DUI? Was he drinking last night too?

*Frank:* Looks like it, and maybe something stronger. There was a police guard outside his room at the hospital.

*Zane:* Hmm. Will he make it?

*Frank:* You know how it is. The drunk ones always survive and kill the innocent ones.

*Zane:* Is there anything I can do for them? Who’s looking after the kids?

*Frank:* Pam’s mother came and got them this morning. You know his mother is in Germany. I’m sure she’ll be on the next plane.

*Zane:* Frank, that’s awful. I’ve got to go now. Say, should I go on over to the hospital this afternoon?

*Frank:* No, maybe tomorrow to try to give the relatives a break. Be careful.

*Zane:* Thanks, bye.

**Use a modal to answer these questions based on the information you just heard.**

***Example:* How did Frank know to go to the hospital?**

Possible answers:

He might have seen the accident.

Someone might have called him.

**1. Pam is in intensive care and may not make it. Why?**

Possible answer: She might have been injured too seriously in the automobile accident.

**2. What was the noise Zane heard?**

Possible answer: It might have been the automobile accident.

**3. Why was the truck driver's license revoked?**

Possible answer: It must have been because of the DUI conviction that Dieter's brother heard about.

**4. Was the truck driver drinking last night?**

Possible answer: He might have been, but we don't know.

**5. Was the truck driver seriously hurt?**

Possible answer: He must not have been if there is a police guard outside his room.

**6. Why is there a police guard outside the truck driver's hospital room?**

Possible answer: The police could be afraid that he will try to escape if he isn't seriously hurt.

**7. Will the truck driver be charged with a crime?**

Possible answer: If it can be proven that he was at fault and Pam dies, he could be charged with vehicular homicide.

[*Note:* Since we don't know for certain that the accident was his fault or that he was drinking or using drugs, we can't be certain that he will be charged with any crimes.]

**8. Is Dieter German?**

Possible answer: He might be, but we're not certain.

[*Note:* In spite of the circumstantial evidence (his name and the fact that his mother is in Germany), we cannot be certain that he is German; it is still only a possibility.]

**9. Why did Pam's mother get the children?**

Possible answer: There must be no one else to care for the children while their parents are in the hospital.

**10. When is the best time for Zane to go to the hospital?**

Possible answer: He should wait till tomorrow to give the relatives a break.

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## Language Activity 17: Active and Passive Voice (page 234)

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### Exercise A

(page 236)

1. Active: The attorney **made** an objection.
2. Active: The judge **declared** a mistrial.
3. Already active
4. Active: Someone **removed** the evidence from the crime scene.
5. Active: The attorney **filed** the motion.

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## Language Activity 18: Conditionals (page 237)

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### Exercise A. Sentence Combining

(page 238)

1. If your father signs the contract for you, we can sell you the car.
2. If you don't smoke cigarettes, your life insurance premiums will be lower.
3. If the company hires you, you must agree not to compete with them later.
4. If the contract is ready next week, my clients won't object to the extra costs for express mail delivery.
5. If the Lucy brothers accept that the Zehmers were joking, the judge hopes to be able to dismiss the case.



### Exercise B. Sentence Combining

(page 239)

1. If the appeal were timely, the panel would review your case.
2. If the paper had not been too long, we would have accepted it for publication.
3. If the land reform laws had not been passed, the family would not have lost the land.
4. If I had read the journal article, I would have known about the change in the law.
5. If the lawyer had not missed the filing deadline, the case would not have been dismissed.
6. If the students had studied, they would not have failed their exams.
7. If the guard had not found the burglar, the diamond would have been stolen.
8. If the deed had not been found in his safe, we could not have proved ownership.
9. If an important client were not coming to see me later, I would not be working here at the office on Sunday.
10. If she were not very intelligent, she would not be working for the Ministry of Justice.

### Exercise C. Sentence Combining

(page 241)

1. If they have not left a credit card as a deposit, they must pay the full amount in advance.
2. The contract requires them to complete the work by next week unless it rains.
3. Unless both parties are competent, the contract is not enforceable.
4. Generally, acceptance must mirror the terms of the offer if you do not use boilerplate forms.
5. If it is not market practice, silence doesn't normally constitute acceptance.

### Exercise D. Simplification

(page 242)

If any record is transmitted to this Court,  
and  
if there is any material written in a foreign language,  
and  
if there is no translation made under the authority of the lower court,  
or  
if there is no translation that is admitted to be correct,  
then the clerk of the court transmitting the record shall advise the Clerk of  
this Court immediately so that this Court may order that a translation be  
supplied, and if necessary, printed as part of the joint appendix.

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## Language Activity 19: Gerunds, Infinitives, and *That* Clauses (page 242)

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### Exercise A. Sentence Combining

(page 244)

2. Last week the teacher reminded us to study for our products liability exam.
3. I asked the study group to help me understand strict liability in tort.
4. I forced myself to study every day last week.
5. The work and effort permitted us to pass those difficult exams.

### Exercise B. Rewriting Sentences

(page 246)

1. All the employees, whom I'm representing in the negotiations, agreed not to ask for a raise for one year.
2. The union members decided not to strike while talks continued.
3. For its part, the company did promise not to cut health benefits.

4. Everyone expects next year not to be as difficult as last year.
5. Most employees are simply glad not to be fired from their jobs.

### Exercise C. Rewriting Sentences

(page 247)

1. To follow the code of ethics at all times is a moral imperative.
2. To put aside your personal beliefs when representing a client who you believe might be guilty is not easy.
3. Not to be as prepared as possible for each case would be unethical.
4. To prove unethical behavior would be necessary before an attorney could be disbarred.
5. Even if she were a personal friend, to address a judge by her given name is improper.

### Exercise D. Rewriting Sentences

(page 249)

[*Spelling note:* You may need to review the spelling rules that govern whether or not one doubles the final consonant of a verb when adding *-ing*. Remember that there are some slight differences between American and British usage: For example, travelling versus traveling, the second being the standard American form.]

1. The manufacturer insisted on his being able to produce a safer product.
2. He intended on his settlement offer satisfying those filing the class action suit.
3. Of course, the plaintiffs' attorneys were confident about winning the case.

[*Note:* Consonant must be doubled to keep vowel "short."]

4. As a result, they weren't at all doubtful of their clients' being awarded a large settlement by the court.
5. The manufacturer wasn't yet aware of the attorneys' being able to gather so much clear-cut evidence of negligent behavior.

### Exercise E. Fill in the Blanks

(page 251)

2. to take
3. smoking
4. to buy
5. seeing

### Exercise F. Sentence Combining

(page 252)

1. The judge ordered that the lawyers not discuss the case until then.
2. He stressed that it was important that everyone have equal access to the information.
3. Furthermore, he threatened that he would charge anyone who spoke to the press before then with contempt of court.
4. My colleague proposed that we hold a joint press conference.
5. We think that would meet the requirement that no one leak the news of the settlement.

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## Language Activity 20: Reported Speech (page 253)

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### Exercise A. Reported Speech in the Past

(page 255)

1. Mr. Coke asked Mr. Sammy where he was on December 21, 1996.
2. Mr. Sammy replied that he had been at home with his wife.
3. Mr. Coke asked whether (or if) anyone other than his wife had seen him there.

[*Note:* Removed from context, it is hard to determine just who *his* and *him* refer to. It's often better in a legal document to repeat nouns more often than is normal in standard prose in order to avoid any pronoun reference problems.]

- Mr. Sammy whispered that he guessed not.

[Note: In a more formal form, we might wish to write: *that he didn't think so* or *that he guessed no one had.*]

- The district attorney said that he had no further questions and thanked Mr. Sammy.

### Exercise B. Modals in Reported Speech

(page 256)

- The client asked his lawyer, Ms. Anna Janovich, if she thought he should plead guilty.
- Startled, Ms. Janovich asked if there was something she should know.
- The client replied that perhaps he could have been wrong about the amount he had asked the accountant to put on the form.
- She asked (wondered to, etc.) herself if he could really not remember or if he was just trying to bluff her.

[Note: It would be very difficult to make a correct sentence with *thought*, so we must change it to a verb more easily used in indirect speech.]

- He mumbled that it could have been closer to a million as Mr. Able said it had been.

### Exercise C. Reporting on a Conversation

(page 257)

	<b>Drafting Date</b>	<b>Settlement</b>	<b>Injunction</b>
Chemcorp attorney	<b>next week</b>	<b>Client wants settlement; Chemcorp doesn't.</b>	<b>will file a motion requesting an injunction</b>
Colleague on subway		<b>asks about settlement possibilities</b>	<b>asks if going to request an injunction</b>

## Listening Script

Woman (attorney working on the Chemcorp case)

*Woman:* I'll be through drafting the lawsuit against Chemcorp next week.

*Man:* They won't work out a settlement with your client?

*Woman:* My client and I tried to settle this informally, but it became clear we'd have to sue them.

*Man:* Are you going to file an injunction, too?

*Woman:* Yes, we're going to try to halt their shipments. Maybe they'll be more eager to listen to my client then.

## Reported speech:

- She said that she would be through drafting the lawsuit against Chemcorp the following week.
- He asked if Chemcorp couldn't work out a settlement with her client.
- She maintained that she and her client had tried to settle the case informally but that it had become clear that they would have to sue Chemcorp.

[*Note:* When there are too many instances of *they*, it is best to replace a pronoun with a noun to avoid any problems that could arise from vague pronoun reference as in *they would have to sue them*—who would sue whom?]

- The man asked the attorney if she was going to also file an injunction.

[*Note 1:* The speaker who is a nonnative speaker of English incorrectly stated the question about the injunction. The question was understood and answered properly by the native speaker. You can use this as an introduction to the communicative aspect of language: mistakes that do not interfere with communication are easily forgiven and ignored by native speakers of English. In fact, many native speakers make mistakes when speaking. The correct form is file for an injunction.]

[*Note 2:* Many careful writers try to avoid "split infinitives" such as in *going to also file*, preferring *going also to file*. However, most nonacademic writers are not bothered by the split forms, which sound much more natural to most American speakers of English.]

- The attorney mentioned that she and her client [again avoiding too many uses of *they*] were going to try to halt Chemcorp's shipments. She thought that maybe then Chemcorp would be more eager to listen to her client.

### Exercise D. Changing Reported Speech to Direct Speech

(page 258)

Of course, there are many correct variants possible; we've just provided one to show you roughly what could be done.

1. *Lawyer*: "What was the posted speed limit? Was there anything unusual about the car?"

*Hughes*: "The posted speed limit was 55 miles per hour, and the car didn't have a regular license tag."

[*Note*: *Had no* is a formal written form while *didn't have a* is more typical of speech.]

2. *Lawyer*: "What happened after you first noticed the car?"

*Hughes*: "I turned on my lights and siren to signal the car to pull over, but it just kept driving for about a mile and a half until it finally stopped."

[*Note*: *Activated* and *continued* are more likely to be used in writing while *turned on* and *kept* are more frequently spoken forms.]

3. *Lawyer*: "How many people did you see in the car?"

*Hughes*: "During my pursuit, I noticed that there were three people in the car."

4. *Lawyer*: "What happened when the car finally stopped?"

*Hughes*: "I started to walk to the car when the driver got out and met me halfway. He was trembling and seemed to be extremely nervous, but he still gave me his valid Connecticut driver's license."

5. *Lawyer*: "What did you do then?"

*Hughes*: "I told the driver to get back to his car, and he did."

6. *Lawyer*: "Did you notice anything unusual while you were talking to the driver?"

*Hughes*: "Yes, the passenger in the front seat—that's him over there—was sweating and seemed to be really nervous."

7. *Lawyer*: "Tell me what happened next."

*Hughes*: "Well, the driver was sitting in his seat looking for some papers, and I told Mr. Wilson to get out of the car."

8. *Lawyer*: "Did anything odd happen when Mr. Wilson got out of the car?"

*Hughes*: "Yes, as he got out, several packages of what looked like crack cocaine fell out of the car onto the ground. I arrested him and charged him with possession of cocaine with intent to distribute."

### Exercise E. Role Play

(page 260)

Student opinion and resource. You should act as the judge if the teams disagree on whether a question is valid or not.

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## Language Activity 21: Building Connections between Clauses (page 260)

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### Exercise A. Sentence Combining

(page 262)

1. We bought a new house last year, and we moved into it in April. (If you delete the second *we*, you must also delete the comma: We bought a new house last year and moved into it in April.)
2. The neighbors seemed very nice, so we expected to get along well with them.
3. We tried to get to know them, but they acted cold and unfriendly.
4. Their dog barked all night, so we didn't get any sleep.

[*Cultural note*: Letting your dog bark is an offense in many cities, but it is rarely enforced.]

5. We asked them to stop the dog from barking, yet they didn't pay any attention.
6. We couldn't talk or watch television, for their stereo blasted loudly all day and all night.
7. They wouldn't discuss the problems with us, nor would they respond to letters we sent them.



[*Language note:* Provide students with the information that follows about strong negatives. Remember that after strong negatives such as *nor* the normal subject auxiliary verb order must be reversed.

. . . nor have we ever seen him again

. . . nor will he pay the fine

If there is no auxiliary, you must add the correct form of *do*. “She doesn’t live in New Mexico” becomes “. . . nor does she live in New Mexico.”]

8. We decided we could sue them, or we could move out. (Also possible: We decided we could sue them or move out.)
9. We moved out of the house, and the neighbors’ best friends bought it!
10. We think they made us miserable on purpose, but we’ll never know for sure.

### Exercise B. Error Identification and Correction

(page 264)

- a 1. Normally, trespassing is a property tort, but it can also be a crime.
- c 2. Damages are not required for intentional trespass; only for negligent trespass must damages be shown. (You can add a semicolon or make two sentences.)
- a 3. Last year I was charged with trespass, and the owner took me to court.

[*Note:* When the clauses are as short as these are, many Americans do not use a comma. It is best, however, to ask your students to use a comma to avoid having to make judgment calls about what is short enough.]

- b 4. I really thought that I was still inside the city park. The land belonged to a Mr. Ubel. (Since this is a comma splice, it can be corrected by adding a conjunction such as *but*.)
- d 5. As he jumped out from behind that tree, he frightened me, and I nearly fainted.
- c 6. Then he pointed his shotgun at me. I had to go with him to his house. (You can also correct this sentence by adding *and* and a comma after *me*.)
- b 7. He called the local sheriff, and we waited for a couple of hours for him to show up.

- d 8. I was very embarrassed, but the sheriff seemed to think it was funny.
- d 9. As he drove me into town to fill out the papers, he told me funny stories about others who had trespassed on Ubel's land.
- a 10. Well, he may have thought it was funny, but I didn't when I had to pay more than \$200 in fines and fees!

### Exercise C. Fill in the Blanks

(page 267)

Sample answers.

In law schools, torts is a required course [cause/effect] **because** the methods and concepts are fundamental to functioning as a lawyer [contrast] **although** it is in more advanced courses where students learn jurisdiction-specific information and practice-oriented skills. [contrast] **Even though** torts focus on the empirical and sociological realities of how the system of civil justice works, students should also consider what is happening in the real world. [cause/effect] **Since** this is the case, practicing lawyers often visit these classes [time order] **once** these courses begin.

### Exercise D. Fill in the Blanks

(page 270)

Of course, there are many possible answers; we have given you just one for each item.

1. As
2. so
3. however
4. additionally
5. At last
6. and
7. When
8. but
9. as a result
10. After

### Exercise E. Error Identification and Correction

(page 271)

We have put an asterisk (\*) where a correction has been made.

1. Although\* we don't always realize it, \*people who commit crimes are not very smart. For example,\* one man in California was arrested\* after he tried to steal a stereo from a car. He broke into the car;\* then he climbed into the trunk to disconnect the speakers. While he was in the trunk, the lid closed,\* so\* he was locked in. When neighbors heard him yelling and pounding on the trunk lid, they \*called the police. The police officer reported hearing the man yell, "Let me out!"
2. In another case, a man was trying to rob a bank. He asked the teller to give him all the money.\* W\*hen she told him that bank regulations required him to give his name and address,\* h\*e wrote the information on a piece of paper;\* \*she gave him the money. Because he \*had given\* the correct address,\* t\*he police were able to arrest him an hour later. While some criminals may be the masterminds we see on television shows, in general I think crooks are pretty stupid!

## Culture Activities

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### Language Activity 22: High-Context and Low-Context Communication (page 272)

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#### Exercise A. Case Hypotheticals and Discussion

(page 273)

1. a. This would seem to be typical of a low-context culture in which time is of the essence. Silence is almost always seen as negative.  
b. High context. The businessmen must first determine if they wish to establish the personal relationship it takes to do business in a high-context culture. One does not just "do" a deal as the low-context businessman might.  
c. Low context. This very self-disclosing action would be a major loss of face in a high-context culture where spouses and parents are highly respected.

- d. High context. Since there is a personal relationship among businessmen; more significantly, one's honor (also known as one's *word*) is important. Also in a high-context culture, the "contract" might be seen as fluid and flexible; it is sometimes the beginning of negotiations, whereas in a low-context culture the contract, because it is written, is seen as the end of the negotiation.
  - e. Low context. Status is not as important. Given names are used, and there is little ritual in the introduction of the higher status person to the lower status person.
2.
    - a. The American sees questions as approval; the students are interested in the subject. The Japanese may see questioning as a sign that the instructor is not a very good teacher or the students wouldn't have had questions.
    - b. In the high-context corporation, "everyone" knows the unwritten rules.
    - c. In a high-context culture, titles of respect, social distance, and relationships are important.
    - d. The Japanese may have perceived the Americans as rude since they did not attempt to get to know the businesspeople before they launched into the "meat" of the deal.
    - e. The high-context student takes the low-context teacher at her literal word.

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### Language Activity 23: Silence (page 274)

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- This is a good time to bring up cultural differences. Use your students as resources. If they have visited or lived in other countries, find out if they have had problems with communication due to silent periods or if there was not enough silence and they always felt rushed.
- An example you could use is the length of the silent period in Finland. The Finns are accustomed to a much longer silent period than what is comfortable for an American. Therefore, an American teacher working in Finland must learn to wait for students to answer the questions from 30 seconds (very quickly) or even up to three minutes or longer. The silence is quite normal in Finland but disconcerting for an American who is used to the American habit of thinking out loud. Many students in the United States will begin to answer a question before they are certain of the answer and

may even change their minds about the correct answer while they are talking.

[*Language and cultural note:* Note the number of American game shows on TV that reward instantaneous answers. They reflect the cultural status given to quick thinkers and speakers.]

### Exercise A. Listening

(page 274)

Listening Script

In the overseas office of an American corporation

Ray: Sami, can I speak with you?

Sami: [a bit of a pause] Yes, Ray.

Ray: [no pause and quickly] Did you delete the Sanders file?

Ray: [pause] What did you do with the Sanders file?

Sami: [pause] What?

Ray: [a bit irritated] Did you discard the Sanders file?

Sami: discard Sanders?

Ray: [now obviously irritated] You know, throw away, destroy, erase. Oh, never mind.

A few minutes later

Ray: Ms. Shane, I'm afraid that Sami really doesn't understand English as well as I thought she did.

Ms. Shane: Let's give her a little more time; it might be our accents.

In the outer office

Sami: Marsha, Ray asked me about the Sanders files. He thought I had deleted it. I was trying to remember who had taken the file, but all of a sudden Ray just got angry and stormed off to Ms. Shane's office.

Marsha: I know, he really is moody sometimes, isn't he?

[*Note:* The fact that the speaker used the plural form *files* in the first sentence and later uses *it* as the pronoun and *file* is an example of a typical mistake that both native and non-native speakers make in spoken English. The communicative purpose of the exchange has still been served, and neither party is greatly disturbed by the mistake.]